

REMARKS

Applicant appreciates the Examiner's courtesy extended during a telephone interview with Applicant's representative, Cecilia Lopez-Chua, on January 24, 2007. The Examiner indicated the allowable subject matter and proposed amendments to claims 13 and 14.

Claims 13-18 and 23, of which claim 13 is independent, remain pending. Claims 1-12, 19-22 and 24-26 are canceled. As suggested by the Examiner, independent claim 13 has been amended by (i) deleting the phrase "by a joint" and inserting the phrase "at one end, the two half-tubes are capable of pivoting between two positions, an open position, wherein the two half-tubes are apart for collecting a sample and a closed position, wherein the two half-tubes are pressed together," between the terms "other" and "wherein." In addition, Applicant amended claim 14 by placing a comma (,) and adding the phrase "when the two-half tubes are in the closed position" at the end of the claim. No new matter has been introduced in the amendments.

Objections to the Specification

At pages 2-4, the Examiner issued three objections over the specification that include: (i) omission of Sections of the specification; (ii) misspellings of the Title of the Invention at page 1 and the term "invention" at page 9 of the specification; and (iii) presence of markings on page 6 of the specification.

To address these objections, Applicant submits marked-up and clean versions of the substitute specification. The amendments presented in the marked-up version of the specification do not constitute new matter. Accordingly, entry of these amendments is requested.

Rejections Under 35 U.S.C. §103(a)

The obviousness rejection of claims 13-18 and 23 over Hessel *et al.*, in view of Lauks *et al.* has been withdrawn.

Claims 13-18 and 23 stand rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent 4,534,939 to Smith *et al.* (hereinafter "Smith"). Applicant respectfully traverses this rejection.

As acknowledged by the Examiner and also argued in the previous Response, Smith *et al.*'s device differs from the claim invention in that "there is no disclosure of the sample-taking means being comprised of two half-tubes that are connected to each other." The claims, as amended in the Response filed November 27, 2006, recite that the two half-tubes are connected to each other by a joint. However, the Examiner, citing *In re Dulberg*, considered that such amendments "do not specify the structure or location of the joint that would suggest that the sample-taking means is pivotable in a 'V' formation."

To expedite allowance of this application, Applicant has amended claims 13 and 14 according to the Examiner's recommendation to recite the structure or location of the joint that connects the two half-tubes of the sample-taking means.

As amended, independent claim 13, recites a device that includes a sample-taking means that comprises "two half-tubes connected to each other at one end, the two half-tubes are capable of pivoting between two positions, an open position, wherein the two half-tubes are apart for collecting a sample and a closed position, wherein the two half-tubes are pressed together." Furthermore, amended dependent claim 14 recites a device according to claim 13, wherein "at least one of the two half-tubes comprises a first disk and a second disk defining a sample chamber, when the two-half tubes are in the closed position." Support for these amendments is found in the specification, particularly at page 3, last full paragraph to page 4, second full paragraph, pages 6-7 and Figure 2.

Based on the above reasons and amendments, Smith fails to render obvious the claimed device for taking and examining samples. Accordingly, Applicant requests the withdrawal of the §103(a) rejection over Smith.

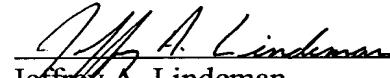
CONCLUSION

For at least the reasons set forth above, this application is in condition for allowance. Favorable consideration and prompt allowance of the claims are earnestly requested. The Commissioner is hereby authorized to charge any payment deficiency to Deposit Account No. 19-2380 referring to Docket No. 032034-004000.

Should the Examiner have any questions that would facilitate further prosecution or allowance of this application, the Examiner is invited to contact the Applicant's representative designated below.

Respectfully submitted,

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